BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. : Order/GR/AE/2019-20/4621]

ORDER UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995, IN THE ADJUDICATION PROCEEDINGS INITIATED AGAINST GIAN FINANCE LIMITED [PAN: AABCG0839R] IN THE MATTER OF ITS DEALINGS IN ILLIQUID STOCK OPTIONS AT THE BOMBAY STOCK EXCHANGE LIMITED.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) observed large scale reversal of trades in the Stock Options segment of Bombay Stock Exchange (hereinafter referred to as **'BSE'**) leading to creation of artificial volume. In this regard, SEBI conducted an investigation into the trading activity in the illiquid Stock Options Segment at BSE for the period April 01, 2014 to September 30, 2015 (hereinafter referred to as **'Investigation Period'**).

2. It was observed during the course of investigation that a total of 2,91,643 trades comprising 81.38% of all the trades executed in the Stock Options Segment at BSE during the investigation period were trades which involved reversal of buy and sell positions by the clients and counterparties in a contract on the same day. It was also observed that the aforesaid trades resulted into creation of artificial volume to the tune of 826.21 crore units or 54.68% of the total market volume in Stock Options segment of BSE during the investigation period.

3. In view of the large scale reversal of trades that were observed in the illiquid Stock Options segment at BSE, it is alleged that these trades were non-genuine in nature. It was observed that Gian Finance Ltd. (hereinafter referred to as '**Noticee**') was one of the various entities which indulged in execution of the non-genuine trades in the Stock Options Segment at BSE during the above referred investigation period. It was observed that Noticee had entered into reversal trades with its counterparties which involved squaring off transactions with significant difference in sell value and buy value of the transactions.

4. Therefore, it is alleged that Noticee had executed the reversal trades which were non-genuine in nature and had created false or misleading appearance of trading in terms of creation of artificial volume in the Stock Options segment at BSE and therefore, it is alleged that Noticee has violated the provisions of Regulations 3(a), (b), (c), (d) and Regulation 4(1), 4(2) (a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Markets) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'). In view of the above, adjudication proceedings have been initiated against the Noticee under the provisions of section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

5. Initially, Shri Biju. S, Chief General Manager was appointed as the Adjudicating Officer (hereinafter referred to as '**AO'**) by SEBI, in the matter to inquire into and adjudge under Section 15HA of the SEBI Act, the aforesaid violations alleged to have been committed by the Noticee. Subsequently, Shri Satya Ranjan Prasad, Chief General Manager was appointed as AO in the matter in the place of Shri Biju S. Pursuant to the transfer of Shri Satya Ranjan Prasad, the undersigned has been appointed as the AO in the matter by SEBI and the same was communicated to the undersigned vide communique dated May 22, 2019. These

proceedings are therefore been carried forward where they had been left off by the previous AO, and an opportunity of personal hearing was granted as detailed hereinafter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. Show Cause Notice dated October 08, 2018 (hereinafter referred to as **"SCN"**) was issued by the erstwhile AO to the Noticee in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**") read with Section 15-I of the SEBI Act, to show cause as to why an inquiry should not be initiated and penalty be not imposed under Section 15HA of the SEBI Act, on the Noticee for the alleged violation of Regulation 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) of PFUTP Regulations.

7. In reply to the SCN, vide letter dated October 12, 2018, the Noticee submitted that they refute the allegations made in the SCN and asked for inspection of documents in the matter. Pursuant to the appointment of the undersigned as AO, the Noticee was granted an opportunity of personal hearing before the undersigned on July 29, 2019 vide Hearing Notice dated July 18, 2019. Vide the said hearing Notice, the Noticee was informed that all the information and documents relied upon to substantiate the allegations in respect to the Noticee has already been provided to it along with the SCN and it was further informed to the Noticee that no other information and records were being relied upon in respect of the Noticee in the matter.

8. Vide letter dated July 25, 2019 (which was submitted on July 29, 2019), the Noticee furnished reply to the SCN, wherein it made the following main submissions:

a) The Noticee contended that their requests for inspection of the documents/data and providing copy of Investigation Report and complete Trade and Order Log had been denied. In support of its contentions, the Noticee quoted the observations of the Hon'ble Supreme Court made in the order dated March 12, 2003 in the case of ***Canara Bank and Ors vs Shri Debasis Das and Ors***, and Hon'ble SAT's judgements vide order dated June 15, 2010 in the **Appeal no. 281 of 2009** filed by **Vikas G Narnavar**, and order dated January 21,2 010 in the **Appeal No. 44 of 2009** filed by **Rajendra G Parikh**.

b) The Noticee submitted that the communication of AO appointment does not mention specific ground to adjudicate upon the alleged violations.

c) The Noticee stated that they deny and refute each and every allegation contained in the captioned SCN unless it is specifically admitted by them in their reply.

d) The Noticee submitted that their trades in the Option Segment of BSE during the Investigation Period comprising of 18 months was only restricted to 6 days

e) The Noticee further contended that the trades in option segment or BSE were only in well-known Companies and all the trades in option segment were executed on anonymous screen based trading platform wherein identity or the counterparties remain undisclosed and hence, the question of any non-genuine trade does not arise at all unless it is proved that such trades were executed in connivance with any counterparty.

f) The Noticee stated that BSE has a sophisticated surveillance system and if there had been any reversal of trade, the system could have alarmed BSE to take corrective measures to restrain any no n- genuine trades happening in its trading platform. However, they had not received any warning or caution letter from BSE for any of their trade in its option segment during the period of their trading and any period thereafter during the investigation period.

g) The Noticee submitted that it is a matter of common knowledge that the option trading platform of the BSE has not been as vibrant as NSE. In such a situation it is just coincidence that their orders might have been matched.

h) The Noticee further stated that nowhere in the entire SCN it is alleged that their Company or its Directors had any connection/association/relationship with any of the counterparties and in absence of any such connection/ association/ relationship with any of the counter party to their trades, it is totally illogical and irrational to allege that their trades with the said counterparties were non-genuine trades which resulted into creation of any artificial volume.

i) The Noticee contended that their trades in the BSE Stock Option Segment were in the normal course of business devoid of any fraudulent intentions. They further stated that in the derivative segment, only those stock and indices are permitted which are very liquid and there is a robust risk mitigation mechanism is in place and since they had traded in the Options of very well-known Company which had tradeable position in the market, there was no reason to doubt credibility of the platform provided by the Exchange as approved by SEBI.

j) The Noticee submitted that nowhere in the SCN was it made clear which trades were specially non- genuine trades.

k) The Noticee contended that there is an apparent contradiction in the SCN that some were non-genuine trades and some were genuine trades, and that they were also not aware whether the counterparties to the non-genuine trades had also been issued SCN.

l) The Noticee submitted that the percentage of non-genuine trades and artificial volumes are misleading as it does not take into consideration the number of trades and volumes generated in complete Option Segment in BSE in a particular Scrip on a particular day.

m) The Noticee submitted that they had executed trades in other segment of the Securities Market and there were no adverse finding has been recorded in the SCN.

n) The Noticee further contended that as none of the acts or trades executed by them fall under the definition of fraud as provided in regulation 2(1)(c) of PFUTP Regulations. In support of its contentions, the Noticee quoted the Hon'ble SAT's order dated September 30, 2003 in the matter of **KSL & Industries Ltd Vs. SEBI (Appeal No. 9 of 2003)**, and order dated November 23, 2009 in the matter of **Vintel Securities Pvt Ltd vs. SEBI (Appeal No. 219 of 2009)**.

o) The Noticee stated that it denies that it has violated the Regulation 3(a), (b). (c), (d) and 4 (1)(2)(a) of the PFUTP Regulations. In this context, they further stated that, it had neither directly or indirectly bought or sold or otherwise dealt in securities in any fraudulent manner; it has not used or employed any manipulative or deceptive devise or contrivance in contravention of the provisions of the SEBI Act or the rules or the regulations made there under; it has not employed any device, scheme or artifice to defraud anyone in the market; it has not dealt in securities in a fraudulent manner or as indulged in unfair trade practice in the securities market; and the trades of the Company were completely genuine and has not created any false or misleading appearance of trading in the securities market as alleged in the captioned notice.

9. The authorised representative (**AR**) of the Noticee appeared for the hearing on July 29, 2019. In the said hearing, the AR reiterated the submissions made by the Noticee vide its letter dated July 25, 2019 which was submitted on July 29, 2019.

ISSUES FOR CONSIDERATION AND FINDINGS

10. I have taken into consideration the facts and circumstances of the case, the material on record, the reply submitted by the Noticee, and also the submissions made by the AR on behalf of the Noticee during the course of personal hearing. The issues that arise for consideration in the present case are:

1) Whether the Noticee violated the provisions of Regulation 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) of PFUTP Regulations?

2) Whether the Noticee is liable for imposition of monetary penalty under Section 15HA of the SEBI Act?

3) If yes, then what should be the quantum of monetary penalty?

11. It is pertinent to mention here the relevant provisions of Regulation 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) of PFUTP Regulations, allegedly violated by the Noticee, and the same is reproduced as under :-

Regulation 3. Prohibition of certain dealings in securities.

"No person shall directly or indirectly—

(a) *buy, sell or otherwise deal in securities in a fraudulent manner;*

(b) *use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*

(c) *employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*

(d) *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.”*

Regulation 4. Prohibition of manipulative, fraudulent and unfair trade practices.

“(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(a) *indulging in an act which creates false or misleading appearance of trading in the securities market;”*

12. Before considering the issues which are to be examined in the instant adjudication proceedings, it is necessary to address the preliminary objection raised by the Noticee that investigation report and complete Trade and Order Log was not provided to it. In this regard, it is noted that all the relevant information and records which have been relied upon in respect of the Noticee were already provided to Noticee along with the SCN. The said SCN inter-alia contains the allegation of execution of non-genuine reversal trades by the Noticee resulting into generation of artificial volume. In order to substantiate the said allegation, illustration of an alleged non genuine trade of Noticee was provided, and additionally tabular details of its contract wise summary of execution of such trades were also given. It is specifically noted that SCN provides relevant narrative on reversal trades being allegedly non genuine in nature, and further, the SCN provides trade log of all the trades executed by Noticee (along with time

of orders) while dealing in F&O segment of BSE during the Investigation Period in form of **Annexure B** to the SCN, trade log of its all the alleged non genuine trades executed by Noticee (along with time of orders) during Investigation Period at BSE in form of **Annexure C** to the SCN, and detailed contract wise summary of its dealing in all the 14 contracts in which it alleged to have executed non genuine trades in the form of **Annexure D** to the SCN. Further, liberty was provided to Noticee to respond to the SCN.

13. Further with regards to the above, I refer to the judgment of the Hon'ble Securities Appellate Tribunal (**SAT**), in the case of *Mayrose Capfin Private Limited V/s. Securities and Exchange Board of India* (Appeal No. 20 of 2012) dated 30.03.2012 wherein it was observed that *"The principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation, but, has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count"*.

14. In the instant proceedings, I note that the trade and order logs for the alleged non-genuine trades has been provided to the Noticee along with the SCN. Therefore, I note that all the relevant documents relied upon by SEBI have been provided to the Noticee, which were also communicated to the Noticee vide letter dated July 18, 2019. Accordingly, I do not find merit in the above contention of the Noticee.

15. With regards to the current proceedings, I note that the allegations levelled in the SCN are mainly to the effect that the Noticee has created false and misleading appearance of trading in terms of artificial volumes in the stock options segment

of BSE by way of reversal of trades in illiquid stock options and thereby the Noticee violated the provisions of Regulation 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) of PFUTP Regulations.

16. Reversal trades have been considered those trades in which an entity reverses its buy or sell positions in a contract with subsequent sell or buy positions with the same counterparty during the same day. The said reversal trades are non-genuine trades as they are not executed in normal course of trading, lack basic trading rationale, and allegedly lead to false or misleading appearance of trading in terms of generation of artificial volume, hence, are deceptive and manipulative. From the facts/material made available, I find that the repeated reversal trades executed by the Noticee, which was observed in the present case, were undertaken with the counterparties of the Noticee with a predetermined arrangement to book profit or losses respectively, and therefore, the parties to the trades were not trading in the normal sense and ordinary course of business. Therefore, it is alleged that the Noticee by indulging in such reversal trades with the counterparties in the illiquid stock option segment at BSE has managed to generate artificial volume in the Stock Options segment at BSE during the investigation period.

17. In this regard, it is pertinently noted from the trade log that the Noticee had traded in total 14 unique contracts in the Stock Options segment of BSE during the above mentioned investigation period. In these 14 contracts, it is observed that Noticee had executed 60 non-genuine trades. I note that the above mentioned trades of the Noticee had resulted in the creation of artificial volume of a total 49,76,500 units and incurring a loss of Rs. 2,63,64,850/- approx. Further, it is observed that the trades executed by the Noticee were squared up within a short span of time with the same counterparty i.e. trades were reversed within seconds/minutes on the same day. Thus, it is observed that Noticee had indulged

in reversal trades with its counterparties in the stock option segment of BSE and the same were non-genuine trades.

18. Further, it is noted that Noticee had contributed to significant 13% to 100% of the trading volume in 13 of the said 14 contracts at BSE during the above mentioned investigation period. It is also noted that the trades executed by the Noticee were squared up with its counterparties within a short span of time and mostly within few seconds/minutes and with a significant price difference. The non-genuineness of these transactions executed by the Noticee is evident from the fact that there was no commercial basis to suddenly, within a matter of few seconds/minutes, reverse the position of the Noticee with its counterparties with significant price difference when the value of the underlying had not undergone any significant change. The frequent trade reversals in the said case points out to the fact that the parties to the transactions, including the Noticee, did not intend to transfer the beneficial ownership and through these orchestrated transactions, the intention of which was not regular trading, and whereby other investors have been excluded from participating in these trades.

19. Summary of dealings of Noticee in 14 Stock Options contracts in which it executed non genuine trades during the investigation period, is as follows:

Table – Summary of dealings of Noticee in contracts wherein he executed non genuine trades

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Entity in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
1	BAJT15APR2040.00CEW4	35.20	166500	5.20	166500	100%	50%	100%	44%
2	BHEL15MAR260.00PE	6.50	300000	1.50	300000	100%	14%	100%	13%
3	BIOC15MAR430.00PE	8.60	214500	1.60	214500	100%	38%	100%	26%
4	CARN15MAR230.00PE	10.50	300000	5.50	300000	100%	43%	100%	42%

S. No.	Contract Name	Avg. Buy Rate (Rs.)	Total Buy Volume (no. of units)	Avg. Sell Rate (Rs.)	Total Sell Volume (no. of units)	% of Non Genuine trades of Noticee in the contract to Noticee's Total trades in the Contract	% of Non Genuine trades of Entity in the contract to Total trades in the Contract	% of Artificial Volume generated by Noticee in the contract to Noticee's Total Volume in the Contract	% of Artificial Volume generated by Noticee in the contract to Total Volume in the Contract
5	DLFL15MAR150.00PEW3	4.87	400000	0.05	400000	100%	29%	100%	45%
6	EXID15APR165.00CE	17.00	128000	10.00	128000	100%	50%	100%	62%
7	EXID15APR175.00CEW4	10.00	100000	4.00	100000	100%	29%	100%	36%
8	HDBK15MAR1080.00CE	11.50	45500	0.50	45500	100%	50%	100%	63%
9	HPCL15MAR620.00PE	8.00	180000	3.00	180000	100%	16%	100%	14%
10	HPCL15MAR640.00PE	14.66	244500	7.33	244500	100%	75%	100%	37%
11	HULL15MAR920.00PE	12.20	102500	0.50	102500	100%	25%	100%	29%
12	KOTB15MAR1410.00PE	69.00	148000	42.00	148000	100%	100%	100%	100%
13	LNTF15APR75.00CEW1	3.90	160000	0.05	160000	67%	7%	10%	0%
14	MARU15APR3750.00CE	39.00	142750	4.00	142750	100%	0%	100%	27%

20. From the above table, following is noted as regards to dealings of Noticee in said 14 contracts:

a) Noticee has executed non-genuine trades in above 14 contracts, wherein in 13 contracts, 100% trades were non-genuine trades.

b) No. of non-genuine trades of Noticee has significantly contributed to the total no. of trades from the market in the above contracts, as a substantial 7% to 100% of the trades happened in 13 contracts were due to non-genuine trades executed by the Noticee.

c) A substantial 100% of volume generated by the Noticee in 13 of said 14 contracts was artificial volume, and further artificial volume generated by the Noticee also contributed to significant 13% to 100% of the total volume from the market in 13 of said 14 contracts.

d) Non-genuine trades executed by Noticee in above contracts had significant differential in buy rates and sell rates considering that the trades were reversed on same day.

21. For the purpose of understanding, the trading pattern of the Noticee in the aforementioned 14 contracts in respect of non-genuine trades and artificial volume created by the Noticee are illustrated through the dealings of the Noticee in one of the contracts viz, **"EXID15APR165.00CE"** as under:

Trade Date	Client Name	CP Client Name	Trade Time	Trade Rate (Rs.)	Traded Quantity
27/03/2015	NIDHI AGARWAL	GIAN FINANCE LTD	14:34:37.577487	10	128000
27/03/2015	GIAN FINANCE LTD	NIDHI AGARWAL	14:34:42.231703	17	128000

a) During the investigation period, total 4 trades for 4,16,000 units were executed in the said contract, wherein Noticee was party to 2 of the said 4 trades for 2,56,000 units, on 27/03/2015.

b) While dealing in the said contract on 27/03/2015, Noticee at 14:34:37 hrs entered into 1 sell trade with counter party viz. NIDHI AGARWAL for 1,28,000 units at rate of Rs. 10.00 per unit. Thereafter, on the same day, within 5 seconds from the above trade, Noticee, at 14:34:42 hrs entered into 1 buy trade with same counterparty for 1,28,000 units at rate of Rs. 17.00 per unit.

c) From the above, it is noted that while dealing in the said contract during the investigation period, Noticee executed total 2 reversal trades (1 buy trade + 1 sell trade) with same counterparty viz. NIDHI AGARWAL on the same day and with significant price differential in buy and sell rate.

d) Thus, Noticee, through its dealing in the contract viz. “EXID15APR165.00CE” during the investigation period, executed 2 non genuine trades which is 50% of the total trades from the market in the said contract during the investigation period, and thereby, Noticee generated artificial volume of 2,56,000 units which is 62% of the volume traded in the said contract from the market during the investigation period.

22. From the above trading pattern of the Noticee, I note that the Noticee had bought and sold option contracts with the same counter parties and thus reversed its trades on the same day, from its earlier buy / sell trades, at substantial price difference. Such pattern of dealings suggests that they were not driven by the market parameters like underlying stock price, volatility, etc.

23. I note that derivative contracts by its very nature derives its value from various factors including underlying price. The transactions of the Noticee as mentioned in above paras demonstrates that option contracts bought / sold were immediately reversed on same day at substantially different price, though there was no corresponding price changes in the underlying stock price. Further, analysis of such trades also indicates that price differentials have been deliberately structured for manipulative purposes as one party to the contract had deliberately foregone profitable proposition at the time of executing trade. Such pattern completely runs contrary to economic rationale of any investor to buy at lesser price and sell at higher price. Any rational investor would never deal in the market to deliberately register loss to facilitate buyer to profit at the time of entering trades. Had the counterparties for trades of the Noticee been different, intraday squaring of positions would not have been possible as no genuine counter party investor would ever forego profits. The fact that the counterparties are same, corroborates that the trades were not genuine and executed for manipulative purposes.

24. Therefore, I note that the aforesaid trades of the Noticee were non-genuine and have created false or misleading appearance of trading in terms of artificial volume in stock options and therefore are manipulative and deceptive in nature.

25. From the reply of the Noticee, I note that the Noticee has not disputed execution and subsequent reversal of trades as alleged in the SCN. The Noticee has argued that all its trades were executed on anonymous screen based trading platform wherein identity or the counterparties remain undisclosed and hence, the question of any non-genuine trade does not arise at all unless it is proved that such trades were executed in connivance with any counterparty. The Noticee has also contended that since the option trading platform of the BSE has not been as vibrant as NSE, then in such a situation it is just coincidence that their orders might have been matched. In the present case, it is noted that the Noticee had repeatedly executed reversal trades with the same counterparties on the same day (60 trades) and with a wide variation in the prices of the said contracts, within a short span of time indicates a prior meeting of mind with a view to execute the reversal trades at a pre-determined price. It is also pertinent to note that the Noticee and its counterparties placed the buy and sell orders in such a manner that the time difference between the buy order time and sell order time in majority of the trades (in 53 instances out of 60 trades) was less than or equal to approximately 1 seconds. Since these trades were done in illiquid option contracts, there was no significant trading in the said contract and hence, there was no price discovery in the strictest terms. Thus, it is observed that Noticee had indulged in reversal trades with its counterparties in the stock options segment of BSE and the same were non-genuine trades.

26. It is not mere coincidence that Noticee could match its trades with the same counterparties with whom it had undertaken first leg of the respective trades. This is the outcome of meeting of minds elsewhere and it was a deliberate attempt to

deal in such a fashion. Here I would like to rely on the judgment of the Hon'ble Supreme Court in ***SEBI v Kishore R Ajmera*** (AIR 2016 SC 1079), wherein it was held that –

"…in the absence of direct proof of meeting of minds elsewhere in synchronized transactions, the test should be one of preponderance of probabilities as far as adjudication of civil liability arising out of the violation of the Act or provision of the Regulations is concerned. The conclusion has to be gathered from various circumstances like that volume of the trade effected; the period of persistence in trading in the particular scrip; the particulars of the buy and sell orders, namely, the volume thereof; the proximity of time between the two and such other relevant factors. The illustrations are not exhaustive..."

27. The Hon'ble Supreme Court further observed in the same matter that –

"*It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion.*"

28. The Noticee has also stated that in the absence of any connection/association/relationship with any of the counterparties, it cannot be alleged that the trades were non-genuine trades. In this regard, I note that direct evidence is not forthcoming in the present matter as regards to meeting of minds

or collusion of the Noticee with other entities. However, I note that the trading behaviour of the Noticee makes it clear that aforesaid non-genuine trades could not have been possible without meeting of minds at some level. In this context, I deem it appropriate to refer to the Hon'ble SAT order dated July 14, 2006, in the case of ***Ketan Parekh vs. SEBI*** (Appeal no. 2/2004), wherein the Hon'ble SAT has observed that –

"*The nature of transactions executed, the frequency with which such transactions are undertaken, the value of the transactions, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn.*"

29. Further, I place my reliance on the judgment of Hon'ble Supreme Court in the matter of ***SEBI v Rakhi Trading Private Limited*** *(Civil Appeal Nos. 1969, 3174-3177 and 3180 of 2011 decided on February 8, 2018),* in which the Hon'ble Supreme Court observed that –

"Considering the reversal transactions, quantity, price and time and sale, parties being persistent in number of such trade transactions with huge price variations, it will be too naive to hold that the transactions are through screen-based trading and hence anonymous. Such conclusion would be over-looking the prior meeting of minds involving synchronization of buy and sell order and not negotiated deals as per the board's circular. The impugned transactions are manipulative/deceptive device to create a desired loss and/or profit. Such synchronized trading is violative of transparent norms of trading in securities….."

30. In the said reply the Noticee has submitted that the percentage of non-genuine trades and artificial volumes are misleading as it does not take into consideration the number of trades and volumes generated in complete Option Segment in BSE in a particular Scrip on a particular day. The Noticee has also contended

that their trades in the Option Segment of BSE during the Investigation Period comprising of 18 months was only restricted to 6 days. In this regard, I note that the Noticee had traded in the stock options segment of BSE during the period from March 12, 2015 to March 31, 2015 and had executed 60 non-genuine trades in 14 contracts, resulting in artificial volume of 49,76,500 units. The artificial volume generated by the Noticee contributed a significant 13% to 100% to the volume in 13 out of the 14 contracts. Further, in view of the aforesaid observation of the Hon'ble Supreme Court in **Rakhi Trading** (Supra), mentioned in the previous paragraph no. 29, I find no merit in the aforesaid contention of the Noticee.

31. Further the Noticee submitted that nowhere in the SCN it was made clear which trades were specially non- genuine trades. In this regard, it is reiterated that the SCN contained illustration of an alleged non genuine trade of Noticee, and additionally tabular details of Noticee's contract wise summary of execution of such trades were also given. It is further noted that the SCN also contained trade log of all the alleged non genuine trades executed by Noticee during Investigation Period at BSE as well as the detailed contract wise summary of its dealing in all the 14 contracts in which it alleged to have executed non genuine trades in the annexures to the SCN. Thus, I find no merit in the aforesaid contentions of the Noticee.

32. As regards to the contention of the Noticee that since they had traded in the options of very well-known company which had tradable position in the market and there was no reason for them to doubt credibility of the platform provided by the Exchange, it is noted that the scrips were expectedly liquid in the cash market, however the particular options contracts of the said scrips in which the entity had traded were illiquid as the entity itself contributed a significant of 13 % to 100 % of the total volume across market in 13 out of the said option contracts. Hence, I do not find any merit in the aforesaid contention of the Noticee.

33. Further, the Noticee has contended that all their transactions were genuine and the same were not fraudulent in any manner and there were no manipulative or deceptive device or contrivance in contravention of the provisions of SEBI Act or the rules or regulations made there under. In this regard, I note that the price of a stock option is based on several parameters such as price of underlying stock, intrinsic value of option, expected volatility, interest rates, dividends etc. The change in price has to be justifiable based on change in the various underlying parameters. There is no justifiable basis for the wide variation in prices at which the contracts are traded within minutes and some, even seconds, except for an element of pre-determination in the prices by both counterparties when reversing the trades. In this regard, reliance is also placed upon the observations of the Hon'ble Supreme Court in **Rakhi Trading** (Supra), wherein the Apex Court stated at Para 35 and Para 41 of the Order that "*The platform of the stock exchange has been used for a non-genuine trade. Trading is always with the aim to make profits. But if one party consistently makes loss and that too in pre-planned and rapid reverse trades, it is not genuine; it is an unfair trade practice*". *"According to SAT, only if there is market impact on account of sham transactions, could there be violation of the PFUTP Regulations. We find it extremely difficult to agree with the proposition. As already noted above, SAT has missed the crucial factors affecting the market integrity, which may be direct or indirect. The stock market is not a platform for any fraudulent or unfair trade practice. The field is open to all the investors. By synchronization and rapid reverse trade, as has been carried out by the traders in the instant case, the price discovery system itself is affected. Except the parties who have pre-fixed the price nobody is in the position to participate in the trade. It also has an adverse impact on the fairness, integrity and transparency of the stock market."*

34. Further, the contentions of the Noticee that they had not received any warning or caution letter from BSE for any of their trade in its option segment, does not absolve the Noticee from responsibility for carrying out reversal trades which

generated artificial volume without change of beneficial ownership. The trading volumes generated by the aforesaid trades of the Noticee were non-genuine and artificial. I note that the law in this regard is well-settled through the decision of the Hon'ble Supreme Court in ***Rakhi Trading*** (supra) and its observation in this regard is reiterated as follows -*"The non-genuineness of these transactions is evident from the fact that there was no commercial basis to suddenly, within a matter of minutes, reverse a transaction when the value of the underlying had not undergone any significant change."*

35. Finally, the Noticee has denied the violations provisions of Regulations 3(a), (b), (c), (d) and 4(1), 4(2)(a) of the PFUTP Regulations as alleged in the SCN. In this regard, I note that the scheme, plan, device and artifice employed by the Noticee in this case of executing reversal trades in illiquid stock options contracts at irrational, unrealistic and unreasonable prices, tantamount to fraud on the securities market in as much as it involves non-genuine/ manipulative transactions in securities and misuse of the securities market mechanism. The non-genuine and deceptive transactions of the Noticee are covered under the definition of 'fraud' and the dealings of the Noticee as discussed herein above were "fraudulent", as defined under regulation 2 (1) (c) of PFUTP Regulation and prohibited under the provisions of Regulations 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) PFUTP Regulations, thereof. In this regard, the observations of the Hon'ble Supreme Court in the case of ***Rakhi Trading*** *(supra)* on whether such reversal of trades as has been detailed above, constitutes "fraud" under PFUTP Regulations, is reproduced herein below:

"Regulation 2(1)(c) defines fraud. Under Regulation 2(1) (c)(2) a suggestion as to a fact which is not true while he does not believe it to be true is fraud. Under Regulation 2(1) (c)(7), a deceptive behaviour of one depriving another of informed consent or full participation is fraud. And under Regulation 2(1)(c)(8), a false statement without any reasonable ground for believing it to be true is also fraud. <u>In a synchronised and reverse dealing in securities, with</u>

predetermined arrangement to book loss or gain between pre-arranged parties, all these vices are attracted."

36. Keeping in mind the dicta of the Hon'ble Supreme Court as reproduced above, I see no reason to take a different view in the present case. Therefore, I hold that the Noticee had indulged in execution of reversal trades in Stock Options with same entities on the same day, which are non-genuine in nature and had created false or misleading appearance of trading in terms of artificial volumes.

37. Therefore, I am of firm opinion that the Noticee by indulging in reversal of trades on the stock exchange platform, which are manipulative / unfair / fraudulent / non-genuine, in nature, had created artificial volumes in the contracts and thereby Noticee had violated the provisions of Regulations 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.

38. At this juncture, reliance is placed upon the Order of the Hon'ble Supreme Court in the matter of ***Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361}*** – where the Hon'ble Supreme Court of India held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…..".*

39. The aforesaid violation of the provisions of PFUTP Regulations by the Noticee attract monetary penalty under Section 15HA of the SEBI Act, which at the time of the violation committed by the Noticee, *inter-alia* reads as follows:

Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty - five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

40. While determining the quantum of penalty under Section 15HA of the SEBI Act, it is important to consider the factors stipulated in Section 15J of the SEBI Act, which reads as under:-

"15J - Factors to be taken into account while adjudging quantum of penalty
While adjudging quantum of penalty under section 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage wherever quantifiable, made as a result of the default

(b) the amount of loss caused to an investor or group of investors as a result of the default

(c) the repetitive nature of the default

Explanation – *For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F,15G,15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."*

41. As established above, the trades by the Noticee were non-genuine in nature and created a misleading appearance of trading in illiquid stock option contracts. Investigations have shown amount of profit / loss of the counterparties to the trades as a result of the non-genuine trades. However, I note that the Noticee indulged in creation of artificial volumes by way of reversal of trades in illiquid options contracts, where wider market participation was not involved in the trades, and the trades are such that one of the counterparty books a profit while the other counterparty books a loss. Hence, it would be appropriate to consider the impact of these transactions between the two counterparties. As observed in the preceding paragraphs the Noticee executed non-genuine trades in 14 contracts, wherein it executed total 60 non-genuine trades, which resulted in

artificial volume of total 49,76,500 units. In 13 of these 14 contracts, 100% trades of the Noticee were non-genuine. The number of non-genuine trades of the Noticee had contributed significantly to the total number of trades from the market in these 13 contracts, in the range of 7 % to 100%. A substantial 100% of volume generated by the Noticee in the said 13 contracts was artificial volume. Further, artificial volume generated by the Noticee also contributed to significant (in the range of 13% to 100%) of the total volume from the market in the said 13 contracts. Non-genuine trades executed by the Noticee in above contracts had significant differential in buy rates and sell rates considering that the trades were reversed on same day.

42. Such persistent trading pattern of the Noticee, which was fraudulent and deceptive, affects the normal price discovery mechanism in the securities market. People who indulge in manipulative, fraudulent and deceptive transaction, or abet the carrying out of such transaction which are fraudulent and deceptive should be suitably penalized for such acts of omissions and commissions.

43. In view of the forgoing, I conclude that the Noticee indulged in execution of reversal of trades in Stock Options segment of BSE with same entities on the same day. Such trades are non-genuine in nature and have created false and misleading appearance of trading in terms of artificial volumes in the stock options segment of BSE and thus the Noticee had violated the provisions of Regulations 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) of PFUTP Regulations and liable for penalty under Section 15HA of the SEBI Act.

ORDER

44. After taking into consideration the nature and gravity of the charges established in the preceding paragraphs, factors mentioned under Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the

SEBI Act, read with Rule 5 of the SEBI Adjudication Rules, I hereby impose a penalty of Rs. 5,00,000/- (Rupees Five Lakh Only) on the Noticee viz. Gian Finance Limited in terms of Section 15HA of the SEBI Act, for the violation of the provisions of Regulations 3 (a), (b), (c), (d) and 4 (1), 4 (2) (a) of PFUTP Regulations for indulging in execution of reversal trades in Stock Options with same entities on the same day, thereby creating artificial volume, leading to false and misleading appearance of trading in the illiquid stock options at BSE.

45. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

46. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department - DRA-I), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.". The Noticee shall also provide the following details while forwarding DD / payment information:

a) Name and PAN of the Noticee
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

47. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for

realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties

48. In terms of Rule 6 of the SEBI Adjudication Rules, copy of this Order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date : September 26, 2019
Place : Mumbai

Shri G Ramar
Adjudicating Officer